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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,517	10/24/2005	William Beaton	50234-00001	5092
25231	7590	12/22/2008	EXAMINER	
MARSH, FISCHMANN & BREYFOGLE LLP			LANGEL, WAYNE A	
8055 East Tufts Avenue			ART UNIT	PAPER NUMBER
Suite 450			1793	
Denver, CO 80237				

  

MAIL DATE	DELIVERY MODE
12/22/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/534,517	BEATON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Wayne Langel	1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 28 October 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-18,36 and 37 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-18,36 and 37 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 11 May 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of Naschberger. Robinson discloses the production of a blended fertilizer by combining humus with inorganic nutrients. (See col. 2, lines 46-62 and col. 4, lines 5-37.) The difference between the process disclosed by Robinson, and that recited in claim 1, is that Robinson does not specifically disclose that the soil and climatic conditions where the crop is to be grown should be established. However Robinson suggests at col. 1, lines 33-55 that the amount of humus and inorganic nutrients would be dependent on how much of the humus and fertilizers have been depleted from the soil, and Naschberger suggests in col. 1, lines 10-19 that climatic conditions are a factor to determine how much humus and inorganic fertilizers should be applied to soil. It would be obvious from Robinson in view of Naschberger to produce a blended fertilizer in the process of Robinson in response to data provided by establishing the soil and climatic conditions where the crop is to be grown, since Robinson and Herschberger, respectively, disclose that soil and climatic conditions are factors in determining the composition of a blend of humus and inorganic nutrients..

Claims 2-13, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of Naschberger as applied to claim 1 above, and further in view of Northrop. It would be further obvious from Northrop to process organic

material biologically to form the humus used for the process of Robinson, since Northrop discloses that humus may be produced by treating animal excrement in a bioreactor (see the Abstract), and it would be expected that such biologically produced humus would be suitable form blending according to the process of Robinson.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of Naschberger as applied to claim 1 above, and further in view of Connell. It would be further obvious from Connell to develop a computer program to determine the nutrient requirements in the process of Robinson, since Connell establish at col. 4, lines 23-34 that a computer analysis contrasting soil condition with crop needs may be used to determine a complete and balanced fertilizer formulation.

Claims 1 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Connell in view of Naschberger. Connell discloses a process wherein soil condition is determined in producing a fertilizer blend of organic material and inorganic nutrients. (See the Abstract and col. 3, line 59 to col. 4, line 43.) The difference between the process disclosed by Connell, and that recited in claims 1 and 14-19, is that Connell does not disclose that climatic conditions should also be considered. Naschberger suggests in col. 1, lines 10-19 that climatic conditions are a factor to determine how much humus and inorganic fertilizers should be applied to soil. It would be obvious from Naschberger to consider climatic conditions, as well as soil conditions in determining the composition of the blend for the blend of Connell.

Claims 2-13, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Connell in view of Naschberger as applied to claim 1 above, further in

view of Robinson, even further in view of Northrop. It would be further obvious from Robinson to employ humus as the organic material in the process of Connell, and from Northrop to employ biologically produced humus. Robinson and Northrop are relied upon as discussed hereinbefore.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-18, 36 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Terms such as "industrially processing", "may be", "potential customer", "if the order is not confirmed" and "selling price" render the scope of the claims vague and indefinite since it could not be determined when such conditions would be met. In claim 2, line 8, there is no clear antecedent basis for "the humus like material" since "an activated sludge" could be formed in step (i). In claims 12 and 36, it is indefinite as to whether these claims require all the process steps as recited in claim 2.

Claims 36 and 37 are objected to under 37 CFR 1.75 (b) in constituting duplicates of claims 12 and 13, respectively.

The other references are made of record for disclosing various organic fertilizers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne Langel whose telephone number is 571-272-1353. The examiner can normally be reached on Monday through Friday, 8 am - 3:30 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Wayne Langel/  
Primary Examiner, Art Unit 1793